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9 UNITED STATES DISTRICT COURT
10 DISTRICT OF ARIZONA

11 Midwest BankCentre, a Missouri
12 Company; and Jerry Scheidegger, an
13 individual,

14 Plaintiffs,

15 vs.

16 <midwestbankcheated.com> and
17 <jerryscheideggercheatedme.com>,
18 Internet domain names; and John Doe, an
19 individual

20 Defendants.

No. 15-cv-_____

COMPLAINT

21 Now Come Midwest BankCentre (“Midwest Bank”) and Jerry Scheidegger (collectively,
22 “Plaintiffs”) by and through counsel undersigned, and for cause of action with *in rem* jurisdiction
23 against the Internet domain names <midwestbankcheated.com> and
24 <jerryscheideggercheatedme.com> (collectively, “Domain Names”) hereby allege and claim as
25 follows:

PARTIES, JURISDICTION AND VENUE

- 26 1. Midwest Bank is a corporation organized under the laws of Missouri.
- 27 2. Jerry Scheidegger is an individual who resides in Missouri and is a Board Member
28 of Midwest Bank.

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1 3. Pursuant to 15 U.S.C. § 1125(d)(2)(C)(i), a domain name is deemed to have its situs
2 in the judicial district in which the domain registry is located. GoDaddy is the registrant of the
3 Domain Names. GoDaddy's principal place of is located in this district at 14455 North Hayden
4 Road, Scottsdale, Arizona.
5

6 4. GoDaddy owns Domains By Proxy, which provides privacy protection
7 services to registrants of domain names.
8

9 5. Pursuant to terms of 15 U.S.C § 1125(d)(2)(A), the owner of any distinctive
10 trademark, registered or common law, "may file an *in rem civil* action against a domain
11 name in the judicial district in which the domain name . . . registry, or other domain name
12 authority that registered or assigned the domain name is located if . . . [the Plaintiff] is not
13 able to obtain *in personam* jurisdiction over a person who would have been a defendant in
14 a civil action under paragraph (1) [of the ACPA]."
15

16 6. Plaintiffs are unable to obtain *in personam* jurisdiction over the registrant(s) of
17 the Domain Names as the identity of the registrant ("John Doe") is privacy protected by
18 Domains By Proxy.
19

20 7. Plaintiffs repeatedly attempted to contact GoDaddy and Domains By Proxy
21 regarding John Doe's unauthorized registration and use of the Domain Names.

22 8. John Doe is an individual whose identity is unascertained at this time, who is
23 the registrant of the Domain Names.
24

25 9. The Domain Names are Internet domain names subject to *in rem* jurisdiction
26 in the United States District for the District of Arizona under the Anticybersquatting
27
28

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1 Consumer Protection Act (ACPA), 15 U.S.C. § 1125(d)(2)(C)(ii). Documents sufficient to
2 satisfy 15 U.S.C. § 1125(d)(2)(C)(ii) are attached hereto and **Exhibit A** .

3
4 10. This Court has jurisdiction over the subject matter of this action
5 pursuant to the Anticybersquatting Consumer Protection Act (ACPA), 15 U.S.C. §
6 1125 *et seq.*, including jurisdiction under 28 U.S.C. §§ 1331, 1332, and 1338(a).

7 11. Venue in this district is proper under 28 U.S.C. §§ 1391 and 1400(b), and
8 under 15 U.S.C. §§ 1125.

9 GENERAL ALLEGATIONS

10
11 12. Midwest Bank is the owner of the common law trademark MIDWEST
12 BANK, which Midwest Bank has been using in connection with banking services since at
13 least as early as 1999, and the MIDWEST BANK mark has become distinctive as a result
14 of Midwest Bank's promotion and use of the MIDWEST BANK mark for over 15 years.

15
16 13. The MIDWEST BANK mark and the personal name of Jerry Scheidegger are
17 being used in commerce by John Doe to tarnish the MIDWEST BANK mark and to spread
18 false and defamatory statements about the Plaintiffs on the website to which the Domain
19 Names direct.

20
21 14. The Domain Names John Doe registered are being used in violation of the
22 Anticybersquatting Consumer Protection Act (ACPA) and various other sections of the
23 Lanham Act.

24
25 15. On or about October 23, 2014, John Doe registered the Domain Names,
26 MIDWESTBANKCHEATED.COM and JERRYSCHEIDEGGERCHEATEDME.COM, as
27 evidenced by the Whois detail reports (attached hereto as **Exhibit A**) to tarnish the
28

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1 MIDWEST BANK trademark and to spread false and defamatory information about
2 Plaintiffs.

3 16. According to the records in the Whois database of Domain Name
4 registrations, the current registrant information John Doe provided for each of the Domain
5 Names is “Registration Private,” and the address provided for the Domain Names is the
6 address for GoDaddy in Scottsdale, Arizona. *Id.*

7
8 17. The Domain Names were registered by and are under the control of John
9 Doe.

10
11 18. The MIDWESTBANKCHEATED.COM domain name is confusingly similar
12 to the MIDWEST BANK mark and trade name, and wholly incorporates it.

13 19. The JERRYSCHEIDEGGERCHEATEDME.COM domain name is
14 confusingly similar to and wholly incorporates the personal name of Jerry Scheidegger.

15
16 20. Plaintiffs have suffered damages as result of John Doe’s unlawful actions,
17 which include diversion of company resources, tarnishment of the MIDWEST BANK
18 mark and Jerry Scheidegger’s personal reputation.

19
20 **CAUSE OF ACTION**

21 **VIOLATION OF THE ANTICYBERSQUATTING CONSUMER**

22 **PROTECTION ACT UNDER 15 U.S.C. § 1125(d)**

23 21. Plaintiffs incorporate and reallege all of the foregoing paragraphs as if fully
24 set forth herein.

25
26 22. This is a claim pursuant to 15 U.S.C. § 1125(d), the Anticybersquatting
27 Consumer Protection Act (“ACPA”), seeking the transfer of the Domain Names.

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1 23. Midwest Bank has common law rights to the MIDWEST BANK mark,
2 which is wholly incorporated into the MIDWESTBANKCHEATED.COM domain name.

3 24. Jerry Scheidegger is the owner of his legal name, which is wholly
4 incorporated into the JERRYSCHEIDEGGERCHEATEDME.COM domain name.

5 25. Midwest Bank has continuously used the MIDWESTBANKCENTRE.COM
6 Domain Name, incorporating its mark in connection with its banking services.

7 26. John Doe has no bona fide use of the Domain Names incorporating the
8 MIDWEST BANK mark or Jerry Scheidegger's personal name.

9 27. John Doe's intent in registering and using the Domain Names is to divert
10 consumers from the Midwest Bank's online location to a site accessible under the Domain
11 Names developed solely to harm the goodwill of Midwest Bank's mark and Jerry
12 Scheidegger's personal reputation, either for commercial gain or with the intent to tarnish
13 Midwest Bank's mark and Jerry Scheidegger's name, by creating a likelihood of confusion
14 as to the source, sponsorship, affiliation, or endorsement of the content of the website to
15 which the Domain Names direct.

16 28. John Doe intentionally applied to register the Domain Names in secret to
17 hide his or her contact information.

18 29. John Doe is using the Domain Names without authorization from Plaintiffs and
19 with the bad faith intent to mislead and deceive the public.

20 30. The aforesaid actions constitute cyberpiracy in violation of § 43(d) of the
21 Trademark Act of 1946 (as amended), 15 U.S.C. § 1125(d).

